

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ZEE MAG</b>	)	
Claimant	)	
VS.	)	
	)	
<b>DILLARD'S</b>	)	
Respondent	)	Docket No. 1,003,608
	)	
AND	)	
	)	
<b>FIDELITY AND GUARANTY INSURANCE</b>	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carriers	)	

**ORDER**

Claimant appealed the March 13, 2003 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**ISSUES**

Claimant alleges that she suffered a repetitive use injury to her right hip from years of labor in the employment of respondent.<sup>1</sup> Although not caused by the employment, claimant contends that her avascular necrosis and/or arthritis conditions were aggravated, intensified or accelerated by her work activities. Judge Benedict denied claimant's request for benefits finding "claimant did not suffer an accidental injury." The issue before the

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<sup>1</sup> Claimant's Petition for Review filed March 17, 2003, states: "That this case involves aggravation of either avascular necrosis or arthritis of the right hip over a period of years. . . ." Claimant's form K-WC E-1 Application for Hearing filed April 26, 2002 alleging injuries to "both knees" was amended on January 31, 2003 to claim a "right hip" injury.

Board is whether claimant suffered injury by accident arising out of and in course of her employment with respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes that the preliminary hearing Order should be affirmed.

At the time of the March 12, 2003 preliminary hearing, claimant was 73 years old. She began working for respondent on March 2, 1996. However, during the time she was employed by respondent, claimant also held several other jobs.

The record contains numerous medical treatment records and reports but only three causation opinions.

Donald Mead, M.D., one of claimant's treating physician's, stated that claimant's condition was not work-related. In his emergency room report, after reviewing her x-rays Dr. Mead stated, "She has a severe degenerative disease of the right hip. This condition is not work related. . . ." <sup>2</sup> He also recommended she followup with her personal physician.

However, Kimball Stacey, M.D., a general practitioner who examined claimant at the request of her attorney, issued a report stating that claimant's injury was work-related. Dr. Stacey believed she "had early degenerative joint disease prior to starting work at Dillard's however, I believe the repetitive and heavy nature of the work she performed at Dillard's both brought on the pain and contributed to the early destruction of the joint." <sup>3</sup> Dr. Stacey opined that claimant's right hip pain would be helped considerably by a total hip replacement.

Finally, board certified orthopedic surgeon, Edward G. Prostic, M.D., who examined claimant at the request of respondent and its insurance carrier, opined that claimant's condition was not work-related. In his June 21, 2002 report to respondent's attorney he wrote after reviewing her x-rays "There is severe degenerative arthritis of the hip joint diffuse cysts about the femoral head and some loss of sphericity of the head." He also stated that:

Her x-rays taken immediately after the accident were interpreted as showing avascular necrosis. The x-rays taken by me today are not obvious for that diagnosis. If there was sudden worsening as she was exiting her car, that

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<sup>2</sup> P.H. Trans. Resp. Ex. A.

<sup>3</sup> P.H. Trans. Ex. 1.

would indicate a fracture of an unstable segment of the femoral head. Assuming this to be true, the fact that it occurred while exiting her car rather than in a slip and fall or heavy lift or some other traumatic event indicates that the problem is the natural progression of underlying disease rather than a work-related phenomenon. Based upon the facts available to me at this time, the underlying arthritis and the sudden worsening are judged to be the natural progression of underlying disease.<sup>4</sup>

From the record provided, the Board concludes that claimant has failed to meet her burden of proving that the work activities she performed for respondent aggravated, intensified or accelerated her preexisting degenerative condition to a degree greater than the natural aging process and the normal activities of daily living.<sup>5</sup>

**WHEREFORE**, the Appeals Board affirms the March 13, 2003 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of June 2003

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BOARD MEMBER

c: Frank D. Taff, Attorney for Claimant  
John M. Graham, Jr., Attorney for Respondent and Liberty Mutual Ins. Co.  
Frederick Greenbaum, Attorney for Respondent and Fidelity & Guaranty Ins.  
Bryce D. Benedict, Administrative Law Judge  
Director, Division of Workers Compensation

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<sup>4</sup> P.H. Trans. Resp. Ex. A.

<sup>5</sup> See K.S.A. 44-508 (e); *Beckman v. Goodyear Tire and Rubber Co.*, 210 Kan. 733, 504 P.2d 625 (1972).